

§ 350.9

40 CFR Ch. I (7–1–14 Edition)

§ 350.9 Initial action by EPA.

(a) When a claim of trade secrecy, made in accordance with § 350.5 of this part, is received by EPA, that information is treated as confidential until a contrary determination is made.

(b) A determination as to the validity of a trade secrecy claim shall be initiated upon receipt by EPA of a petition under § 350.15 or may be initiated at any time by EPA if EPA desires to determine whether chemical identity information claimed as trade secret is entitled to trade secret treatment, even though no request for release of the information has been received.

(c) If EPA initiates a determination as to the validity of a trade secrecy claim, the procedures set forth in §§ 350.11, 350.15, and 350.17 shall be followed in making the determination.

(d) When EPA receives a petition requesting disclosure of trade secret chemical identity or if EPA decides to initiate a determination of the validity of a trade secrecy claim for chemical identity, EPA shall first make a determination that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same submitter and facility, or if it is, that the prior determination upheld the submitter's claim of trade secrecy for that chemical identity at that facility.

(1) If EPA determines that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same submitter and the same facility, or if it is, that the prior determination upheld the submitter's claim of trade secrecy, then EPA shall review the submitter's claim according to § 350.11.

(2) If such a prior determination held that the submitter's claim for that chemical identity is invalid, and such determination was not challenged by appeal to the General Counsel, or by review in the District Court, or, if challenged, was upheld, EPA shall notify the submitter by certified mail (return receipt requested) that the chemical identity claimed as trade secret is the subject of a prior, final Agency determination concerning the same facility in which it was held that such a claim was invalid. In this notification EPA shall include notice of intent to dis-

close chemical identity within 10 days pursuant to § 350.18(c) of this subpart. EPA shall also notify the petitioner by regular mail of the action taken pursuant to this section.

§ 350.11 Review of claim.

(a) *Determination of sufficiency.* When EPA receives a petition submitted pursuant to § 350.15, or if EPA initiates a determination of the validity of a trade secrecy claim for chemical identity, and EPA has made a determination, as required in paragraph (d)(1) of § 350.9, then EPA shall determine whether the submitter has presented sufficient support for its claim of trade secrecy in its substantiation. EPA must make such a determination within 30 days of receipt of a petition. A claim of trade secrecy for chemical identity will be considered sufficient if, assuming all of the information presented in the substantiation is true, this supporting information could support a valid claim of trade secrecy. A claim is sufficient if it meets the criteria set forth in § 350.13.

(1) *Sufficient claim.* If the claim meets the criteria of sufficiency set forth in § 350.13, EPA shall notify the submitter in writing, by certified mail (return receipt requested), that it has 30 days from the date of receipt of the notice to submit supplemental information in writing in accordance with § 350.7(e), to support the truth of the facts asserted in the substantiation. EPA will not accept any supplemental information, in response to this notice, submitted after the 30 day period has expired. The notice required by this section shall include the address to which supplemental information must be sent. The notice may specifically request supplemental information in particular areas relating to the submitter's claim. The notice must also inform the submitter of his right to claim any trade secret or confidential business information as confidential, and shall include a reference to § 350.7(e) of this regulation as the source for the proper procedure for claiming trade secrecy for trade secret or confidential business information submitted in the supplemental information requested by EPA.

(2) *Insufficient claim.* If the claim does not meet the criteria of sufficiency set forth in § 350.13, EPA shall notify the